
The Compliance Connection

State Corporation Commission - Bureau of Financial Institutions
Regulatory News for Virginia Mortgage and Consumer Finance Licensees

APRIL 1999



INSIDE THIS ISSUE:

Preemption of Prepayment Penalty laws.....	1 & 3
Telemarketers/Processors. License Requirements.....	2
Independent Contractor vs. Employee?.....	3
May Orientation.....	4
License Update.....	4 - 5
Opening/Relocating an Office.....	6

Mailing Address:

**1300 East Main Street
Suite 800
P. O. Box 640
Richmond, VA 23218**

Suggestions and comments
concerning the newsletter or its
contents should be addressed to
the Bureau at the above address
or via e-mail at:
nwalker@scc.state.va.us

Federal Preemption of Virginia's Prepayment Penalty Laws:

The major topic lately has been the debate over whether the Alternative Mortgage Transaction Parity Act (AMTPA) preempts Virginia laws that place limits on prepayment penalties. The Bureau has received numerous opinion letters from attorneys, along with copies of opinions from the Office of Thrift Supervision's counsel and various states' Attorneys General which opine that the AMTPA preempts Virginia law. The Bureau does not agree with these opinions.

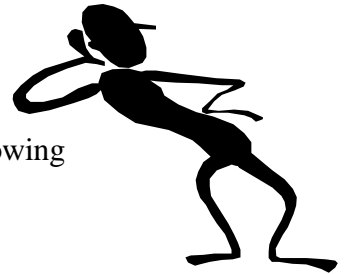
We believe Congress' intention in passing the AMTPA was to authorize, in the case of "housing creditors", the OTS to override state laws which prevented the making of mortgage loans having certain features not common to conventional mortgage loans. We understand the AMTPA gave housing creditors the right to enter into alternative mortgage loan transactions in accordance with OTS regulations only "to the extent that such regulations are authorized by rulemaking authority granted to [the OTS]...under laws other than this section (12 U.S.C. §3803)." The prepayment provisions of Virginia law do not prevent or impede creditors from making adjustable rate loans or other non-conventional mortgage loans (balloon, shared equity loans). They never have.

In our opinion, in §3802(1)(c) of the AMTPA, Congress explicitly restricted the OTS's authority to preemption of only such state laws as related to features "...not common to traditional fixed-rate, fixed-term transactions..." The Virginia statutes applicable to prepayment penalties, §§6.1-330.83 and 6.1-330.85 of the Code of Virginia, govern a longstanding feature of conventional mortgage lending which Congress left to state law under §501(b) (4) of the Depository Institutions Deregulation and Monetary Control Act of 1980(DIDMCA). To express the matter more simply, our view is that federal law governs unconventional features of "alternative mortgage transactions", while state law governs conventional features of such loans, as Congress intended.

(continued on Page 3)

Telemarketers/Processors – Mortgage License is required!

The Bureau has received numerous calls requesting our opinion concerning license requirements for independent telemarketing and loan processing companies. The following article is reprinted from the June 1996 issue of The Compliance Connection:



“Intermediate” Mortgage Activities:

Intermediate mortgage activities can be defined as any activity that may facilitate bringing a potential mortgage borrower together with a mortgage lender for compensation. It can include but is not limited to, such things as mortgage loan “processing” and “telemarketing”. Such activities involve “dealing with” or “managing” part of the mortgage loan process. “Loan processing” is an intermediate activity between lender, broker, and borrower which sees to the fulfillment of documentation and underwriting requirements and facilitates the making of mortgage loans. “Telemarketing” is also an intermediate activity when it directs a potential borrower to a mortgage broker or lender. Virginia Code §6.1-409 broadly defines a mortgage broker as any person who directly or indirectly negotiates, places or finds mortgage loans for others. The word negotiate means to “deal with” or “manage”. In our view, all three terms, “negotiate, place or find” connote in the mortgage lending context, acting as an intermediary between lender and borrower, or between another broker and borrower, by performing functions that facilitate the making of mortgage loans.

Accordingly, anyone engaged in these types of activities must apply for and obtain a Virginia mortgage broker license and comply with all applicable laws and regulations, including record retention. Each day such person operates a mortgage business without having obtained the required license is a felony, as well as, a separate violation of law subject to a \$1,000 fine for each violation, pursuant to Virginia Code §6.1-428. Any person dealing with such an unlicensed entity is an accomplice to the violation, as set forth in Administrative Ruling 1603.

IMPORTANT COMMISSION TELEPHONE NUMBERS

Consumer Finance and Mortgage Examinations(804) 371-9701

Licensing.....(804) 371-9690

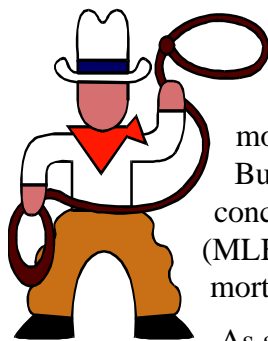
Consumer Complaints.....(804) 371-9705

Banks and Savings Institutions.....(804) 371-9704

Corporate Information – Clerk’s Office.....(804) 371-9733

FAX Number for the Bureau of Financial Institutions.....(804) 371-9416





Independent Contractor vs. Employee?

Many instances have been seen where licensees have reported compensation for mortgage brokering services (i.e. loan origination) by using Form 1099 vs. W-2. It is the Bureau's position that the reporting of compensation on a 1099 demonstrates conclusively, for the purpose of licensing under the Mortgage Lender and Broker Act (MLBA), that the person compensated is an independent contractor. If that person acts as a mortgage broker, as defined under the MLBA, he must be licensed as such.

As set forth in the MLBA, engaging in business as a mortgage lender or broker without a license is a Class 6 felony. Independent contractors performing mortgage brokering services who are not properly licensed will be notified that they are unlawfully engaged in the mortgage broker business. Such individuals are subject to 1) a Commission imposed fine of up to \$1,000 for each day they acted as a mortgage broker as defined by the MLBA and 2) criminal referral to local prosecuting authorities. Licensees compensating such independent contractors will be cited for compensating unlicensed mortgage brokers and are subject to 1) regulatory action (a fine and/or revocation of license), 2) criminal referral to local prosecuting authorities and 3) reporting of such practices to federal and state taxing authorities. Administrative Ruling 1605, issued August 26, 1991, also addresses this issue.

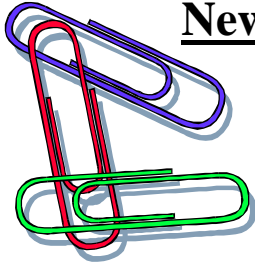
Federal Preemption (continued from Page 1)

In addition, under § 501(b)(4) of DIDMCA, the states had an unlimited period of time within which to "opt out" of federal preemption of "points and other charges" connected with federally-related mortgage loans, and no particular formality was required. Virginia opted out as authorized by Congress by amendment and recodification of its money and interest laws in 1987, including statutes related to points, late charges, prepayment penalties, etc. permitted in connection with mortgage loans. Therefore, it was unnecessary to opt out of federal preemption under AMTPA.

Bureau examiners will continue to cite violations of Virginia statutes relating to prepayment penalties. Licensees found in violation will be required to refund prepayment penalties collected, in excess of the state law limits. In addition, notification of Virginia's limit on prepayment penalties must be provided to current borrowers so they will be aware that any higher penalty cannot be enforced. A copy of the notification must be made a part of the permanent loan file, and investors who have purchased loans providing for penalties in excess of the penalty set forth in the Virginia Code must also be notified.

In addition to possible revocation of license, such violations can be referred to the Attorney General's office for investigation pursuant to Virginia Code §6.1-430.

The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia Mortgage, consumer finance, industrial loan and non - profit debt counseling agency licensees and other interested parties. We encourage you to read each newsletter and distribute the information to all staff members. Comments and suggestions are appreciated!



New Mortgage Licensee Orientation:

The next session of the Bureau's orientation program for new mortgage licensees is scheduled for May 21, 1999. Companies licensed during the period of January 1 and March 31, 1999 will soon receive information regarding the orientation. The session begins at 9:30 a.m. and concludes around 4:00 p.m. Licensees who were unable to attend previous sessions should also register. Space is limited, but we will make every attempt to accommodate interested parties.

License Update:

The following is a list of companies who have surrendered their license, had their license revoked, application denied or been fined by the Commission **since January 1, 1999**. We hope this will be helpful in keeping track of companies with whom you do business. **These lists are accurate as of April 1, 1999.** Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. **NOTE: Doing business with an unlicensed mortgage company is a violation of Administrative Rulings 1603 and 1605, which can result in regulatory action.**

MORTGAGE LICENSES SURRENDERED SINCE JANUARY 1, 1999

MB – 1148 JOHN THOMAS BYRD D/B/A WHITE HORSE PROPERTIES – 1/5/99	MB – 519 MIDSTATE FINANCIAL SERVICES, INC. – 2/24/99
MB – 985 ARTHUR THOMAS LEWIS D/B/A CARDINAL FINANCIAL SERVICES – 1/5/99	MB – 1141 RUSSELL S. WATSON – 2/25/99
ML – 270 AMERICAN MORTGAGE ASSOCIATES, LLP -- 1/8/99	MB – 1100 ALLIANCE HOME MORTGAGE CORPORATION – 2/25/99
ML – 256 AMERICAN MORTGAGE & FINANCIAL SERVICES, INC. D/B/A AMERICAN LIBERTY MORTGAGE -- 1/12/99	MB – 1170 LARRY M. GOLDBERG D/B/A FIRST FINANCIAL CONCEPTS – 3/2/99
MLB – 411 COMMONPOINT MORTGAGE COMPANY D/B/A COMMONPOINT MORTGAGE – 1/18/99	MLB – 43 BENEFICIAL MORTGAGE CORPORATION – 3/8/99
MLB – 316 PARKWAY MORTGAGE, INC. – 1/27/99	MB – 1144 VA MORTGAGE SERVICE CORP. – 3/12/99
ML – 313 LL FUNDING CORP. D/B/A LIBERTY LENDING CORPORATION – 1/28/99	MB – 1085 AMERICAN FEDERAL MORTGAGE CORPORATION – 3/15/99
ML – 310 STD FINANCIAL CORP. D/B/A STANDARD LOANS – 2/1/99	ML – 308 UNION FINANCIAL CORPORATION – 3/15/99
MB – 1039 PINNACLE RESIDENTIAL MORTGAGE CORPORATION – 2/9/99	ML – 369 MEISTER FINANCIAL GROUP, INC. – 3/16/99
	ML – 155 WASHTENAW MORTGAGE COMPANY – 3/16/99
	MLB – 204 UNITED SOUTHERN MORTGAGE CORPORATION OF ROANOKE, INC. – 3/17/99

(CONTINUED FROM PREVIOUS PAGE...)

ML – 335 CMG FUNDING CORP. – 3/17/99**ML – 225 ATLAS CAPITAL FUNDING, INC. –
3/17/99****MB – 1136 MARY M. WILMINK – 3/17/99****MLB – 516 ASSOCIATED LENDERS, INC. –
3/23/99****MLB – 347 1ST AMERICAN FINANCIAL
SERVICES/INC. – 3/23/99****MLB – 374 BROKERS COMMITMENT
CORPORATION T/A HIGHLAND
FINANCIAL CORPORATION – 3/23/99****ML – 240 FIRST SECURITY FINANCIAL
SERVICES, INC. – 3/24/99****MB – 631 COSMOS MORTGAGE
CORPORATION – 3/24/99****MLB – 505 WINDWARD MORTGAGE, LLC –
3/25/99****MLB – 576 CFT FINANCIAL CORP. – 3/29/99****ML – 319 OCEANMARK FINANCIAL
CORPORATION – 3/31/99****MLB – 332 HEADLANDS MORTGAGE
COMPANY – 3/31/99****MORTGAGE APPLICATIONS DENIED SINCE JANUARY 1, 1999****MB – 1279 VIRGINIA HOME MORTGAGE NETWORK INC. – DENIED 2/11/99****MLB – 571 EMB MORTGAGE CORPORATION – DENIED 2/25/99****ML – 371 JP FUNDING INC. – DENIED 2/25/99****MB – 1311 THOMAS DEUTSCH D/B/A ALTUS MORTGAGE – DENIED 3/18/99****MORTGAGE LICENSE REVOCATIONS SINCE JANUARY 1, 1999****MLB – 383 ADVANTAGE MORTGAGE COMPANY LLC T/A BAY MORTGAGE – REVOKED 3/9/99 FOR
FAILURE TO MAINTAIN SURETY BOND****MB – 330 MORTGAGE SOLUTIONS INC. – REVOKED 3/15/99 FOR FAILURE TO MAINTAIN
REGISTERED AGENT IN THE COMMONWEALTH AND ITS AUTHORITY TO TRANSACT BUSINESS IN
VIRGINIA WAS REVOKED****ML – 329 TREO FUNDING, INC. – REVOKED 3/31/99 FOR FAILURE TO MAINTAIN SURETY BOND****PENALTIES PAID BY MORTGAGE LICENSEES SINCE JANUARY 1, 1999****ML – 223 DITECH FUNDING CORPORATION – 3/30/99 -- PAID \$500 FOR FAILURE TO OBTAIN
APPROVAL PRIOR TO THE RELOCATION OF AN OFFICE****MLB – 285 HARBOR FINANCIAL MORTGAGE CORP. – 2/11/99 – PAID \$27,000 FOR VARIOUS
VIOLATIONS OF THE MORTGAGE LENDER AND BROKER ACT**

SCC's Website “www.state.va.us/scc”

...check it out!

Opening a New Office? Relocating?

Did you know that approval from the Commission is required **BEFORE** you open a new office or relocate an existing one? Virginia Code §6.1-416 requires licensees to apply for and obtain approval prior to relocating or opening an additional office. In addition, the statute requires licensees to notify (in writing) the Commissioner, within 10 days, of the actual date of the relocation or opening.



Once granted, the initial approval is good for one year. In most cases, openings and relocations occur soon after the approval is granted, but many times the relocation/opening is delayed or canceled altogether. Until a written confirmation from the licensee is received, the Bureau considers branches “authorized/unopened”. We point out that consumers regularly call the Bureau to determine if offices/branches are licensed.

If the relocation/opening confirmation has not been sent to the Commissioner, we will inform consumers the office is authorized, but unopened. This could lead to the consumer going elsewhere for a loan.

**Bureau of Financial Institutions
State Corporation Commission
P.O. Box 640
Richmond, Virginia 23218-0640**

**IMPORTANT REGULATORY
INFORMATION ENCLOSED!!!**